

PT 02-34

Tax Type: Property Tax

Issue: Government Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

CITY OF ATHENS
Applicant

v.

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

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A.H. Docket #

01-PT-0042

Docket #

00-84-121

Parcel Index #

06-21-100-005 (part of)

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Daniel McGlaughlin of Cavanagh & O'Hara for the City of Athens; Mr. George Logan, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held on February 4, 2002, to determine whether a part of Sangamon County Parcel Index No. 06-21-100-005 qualified for exemption during the 2000 assessment year.

The issue in this matter is whether applicant had an ownership interest in part of Sangamon County Parcel Index No. 06-21-100-005 during the 2000 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that a part of Sangamon County Parcel Index No. 06-21-100-005 did not qualify for a property tax exemption for the 2000 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 7)

2. On February 21, 2001, the Department received the request for exemption of part of Sangamon County Parcel Index No. 06-21-100-005. On April 19, 2001, the Department denied the exemption finding that the property was not in exempt ownership. On April 30, 2001, applicant timely protested the denial and requested a hearing. The hearing on February 4, 2002, was held pursuant to that request. (Dept. Ex. No. 1)

3. Eddie D. and Linda J. Derringer acquired the subject property by a warranty deed on an indecipherable date. (Dept. Ex. No. 1)

4. On December 23, 2000, applicant executed a lease agreement with Eddie D. and Linda J. Derringer as lessors for a piece of property that is approximately .517 acres, the real estate at issue herein. The lease commenced on June 1, 1999, and is for a term of ninety-nine (99) years with an option for renewal of ninety-nine (99) years. (Dept. Ex. No. 1)

5. The leased subject real property is used for applicant's water tower. Applicant-lessee reserves the right to designate the premises for use and occupancy by any other entity with the approval of lessor. Applicant agrees to provide as rent for the term of the lease two water service taps free of charge. Under the provisions of the lease, the lessor agrees to pay all property taxes. Lessee cannot make any additions or improvements to the premises without the written consent of the lessor. The lessee does not have the right to transfer the lease or sublet the property without prior approval of lessor. (Dept. Ex. No. 1)

6. On November 7, 2001, applicant and Eddie D. and Linda J. Derringer executed a quitclaim deed conveying the real property at issue to applicant. (Applicant's Ex. No. 1)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-60, which exempts certain property from taxation in relevant part as follows:

§ 15-60. Taxing District Property. . . .

All property owned by any municipality outside of its corporate limits is exempt if used exclusively for municipal purposes.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

The 2000 assessment year is at issue. During that year, applicant executed a lease with the Derringers to memorialize the fact that the applicant had a water tower on the subject real estate in 1999. Applicant used the tower for water storage during 2000.

Applicant's position is that the 99 year lease constitutes ownership of the property for purposes of the statute. It avers that the lease should be considered to have conveyed the property to applicant. In City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992) the Illinois Supreme Court discusses what is required for ownership of property for real estate property tax exemption purposes. That case involved

two buildings¹ owned by the city, which were on land subleased by the city under a long term agreement. There was no evidence presented that the sublease of the land was entered into so that the city could advantageously finance the purchase of the property. A private lessor, Chicago Dock, owned the land, and the city was responsible for the payment of taxes. The lease was for a term of 50 years with the option to extend the lease for an additional period of 30 years, which was done. The court discusses the fact that the portion of section 19.6², that exempts all public buildings belonging to any county, township, city or incorporated town with the ground on which such buildings are erected, is at issue in the case. The court found that the buildings owned by the city were exempt from taxation but that the land upon which they stood was not. The land was not exempt because the property was leased from a non-exempt lessor and there was no evidence of a sale. The court distinguishes legal title versus equitable title to the land.

In its discussion, the court finds that legal title alone can not be a decisive factor in determining ownership under the tax acts, and analyzes what is the realistic approach to ownership. The control of the property, the type of financing used, and the right to the benefits of the property are considerations when analyzing whether equitable title vests in the entity requesting the exemption.

The lease herein is for the land at issue for a fixed period of 99 years and is conditioned upon the payment of a fixed annual rent, namely two water service taps. Lessor agrees to pay all property taxes. Lessee cannot make any additions or improvements to the premises without the written consent of the lessor. Lessee does not have the right to transfer or sublet the property without prior approval of lessor. The lessors retain control of the property in that they must approve the occupancy by any other entity than the Fancy Creek Water Tower. Applicant provided no evidence that the lease was entered into so that the city could advantageously finance the purchase of the property.

¹ It is unclear in the present case whether applicant actually owns the Fancy Creek Water Tower as the lease provides that applicant reserves the right to designate the premises for use and occupancy by any other entity with the approval of the lessor. (Dept. Ex. No. 1)

² The taxing district exemption portion of the property tax code currently found at 35 **ILCS** 200/15-60.

In City of Chicago v. Tribune Co., 248 Ill. 242 (1910), the court discusses a lease of land situation and states:

Words used in the statute are to be taken in their ordinary acceptance, and a lease, although for a long term, with payments of annual rent, is not a sale, which is a grant of absolute ownership. These leases were for a fixed and determinate period, conditioned upon the payment of fixed annual rental, and have all the characteristics of a lease and none of the features of a sale. *Id.* at 248.

The lease herein also has all the characteristics of a lease and none of the features of a sale. Applicant cannot do what it wishes with the property and for assignment or subletting it must get permission from the owner of the property, the lessor. In fact, applicant implicitly acknowledged that this is a lease for the land, and nothing but a lease, by executing the quitclaim deed to the subject property with the Derringers on November 7, 2001.

It is therefore recommended that the part of Sangamon Parcel Index No. 06-21-100-005 at issue remain on the tax rolls for the 2000 assessment year.

Respectfully Submitted,

Date: May 15, 2002

Barbara S. Rowe
Administrative Law Judge